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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/836,750	04/17/2001	James P. Elia	1000-10-C01	7239

7590 10/05/2007

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EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 10/05/2007

Please find below and/or attached an Office communication concerning this application or proceeding.

Notification of Non-Compliant Appeal Brief (37 CFR 41.37)	Application No. 09/836,750	Applicant(s) ELIA, JAMES P.	
	Examiner Elizabeth C. Kemmerer, Ph.D.	Art Unit 1646	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 23 February 2007 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.

EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See Continuation Sheet.

/Elizabeth C. Kemmerer/
Primary Examiner, Art Unit 1646

Continuation of 10. Other (including any explanation in support of the above items): After consultation with SPE Gary Nickol and Deputy Chief Appeals Administrator Patrick Nolan, it was determined that the brief of 2/23/07 is not compliant in view of the improper request to the Board to consider claim 246 as depending on appealed claim 244 when, in fact, claim 246 actually depends from claim 245. Furthermore, the conditional indication that claim 246 would be amended "at an appropriate time" was also deemed to be improper. Finally, it was determined that Appellant should be advised that claims 245, 248, 249, 252, 264-267, 272-279, 286, and 287, which were indicated as withdrawn from Appeal by Appellant, would stand or fall with claims 236, 238, 239, 243, 244, 246, 247, 250, 251, 253, 257-263, 268-271, and 280-285 on the issue of enablement since they are still officially pending, under examination, and rejected for lack of enablement on the same grounds as the other pending and examined claims. If Appellant wishes to separately argue the enablement of claims 245, 248, 249, 252, 264-267, 272-279, 286, and 287, which were indicated as withdrawn from Appeal by Appellant, arguments should be presented regarding these "withdrawn" claims in the amended appeal brief.